REMARKS

Claims 1-13, 38-39, 49-56 are pending in the present application. Reconsideration of the claims is respectfully requested.

Claims 1, 38 and 49 have been amended to more clearly recite the novel aspects of the invention pertaining to broadcasting multiple channels to a plurality of users and at each user site tuning a receiver to direct a preferred entertainment file from a broadcast stream based on that user's rating information for the current program guide of the streaming transmission to a user output device for streaming playback. A user input device provides real-time feedback on the streaming entertainment files that is returned to the server to update the user rating information that is rebroadcast to the user sites.

Claims 1-13, 38-39 and 49-56 were rejected under 35 USC 103(a) as being unpatentable over Rosenberg et al (7,321,923) in view of Stumphauzer, II (US 2003/0014767). The Examiner relies on Rosenberg for the system server and database, the user rating information stored on the database, the plurality of entertainment files for streaming transmission, a receiver, a user input device for providing real time feedback and a user output device that plays the streaming entertainment file and on Stumphauzer for streaming the entertainment files over a plurality of channels, streaming transmission of the user rating information, and tuning the receiver based on user rating information and playing the streaming entertainment file on the output device. The Examiner asserts that such a combination is obvious for the advantage of supplying a larger variety of content to users simultaneously on bandwidth available and freeing the user from the burden of manually flipping through channels by having the system automatically seek and tune to desired selections.

The basis for an obviousness rejection cannot be merely conclusory statements; there must be some "articulated reasoning with some rational underpinning to support the legal conclusion of obviousness", KSR Int'l v. Teleflex Inc., 127 S. Ct at 1740-41, 82USPQ2d at 1396 (2007). Applicant respectfully submits that the reasoning provided by the Examiner does not meet this standard. Applicant submits that the Examiner is not properly considering the teachings of each reference as a whole but is combining select elements without proper context. The teachings of Rosenberg are selectively deconstructed to remove critical elements and over simplified. When considered fully and in proper context, Rosenberg teaches away from the invention as claimed by Applicant and, if not incompatible with the suggested combination with

Stumphauzer is at least inconsistent. Furthermore, the advantage the Examiner puts forth would not motivate one of skill in the art to combine the teachings of Rosenberg and Stumphauzer as suggested.

Although Rosenberg and Stumphauzer are directed at personalized audio systems the two approaches are fundamentally different. In Stumphauzer, the receiver constantly monitors the available programming on all channels and if any of the programs being broadcast match any of the selections on the user-defined playlist the receiver tunes to the channel and plays the streaming broadcast of the matching program. The system is configured for unidirectional broadcast without any real-time user feedback to the programming. In Rosenberg, a user specified profile for each of one more personalized audio channels is used to build a library of sound recordings for a playlist for each channel. Upon selection of a "personalized audio channel", the consumer device selects and plays back recordings off of the playlist stored in the library. The recordings are not directed from the broadcast stream to the consumer device for real-time playback, but instead are stored for "time-shifted" playback in accordance with the playlist. Depending upon the embodiment, the consumer device may use the broadcast channels to build the library for future playback. Recordings on the playlist that are "needed" are downloaded from the broadcast stream and stored. In other embodiments in which a local recording library is not maintained, either requests for specific recordings are sent to the server, which downloads those specific recordings to a particular user site or selection is handed over entirely to the service which then transmits a personalized audio channel to the user site. Both of these approaches are incompatible with a standard broadcast system that broadcasts multiple "impersonal" channels to service a wide area and many different users.

Applicant submits that one cannot simply deconstruct a portion of Rosenberg's personalized audio system to create a circumstance in which combination with selected portions of Stumphauzer might be advantageous. When the teachings of Rosenberg are considered as a whole, the advantages proffered by the Examiner are moot. First, in Rosenberg's "time-shifted" approach the advantage of supplying a larger variety of content simultaneously is greatly diminished as compared to a "streaming" approach like Stumphauzer's and Applicant's. Rosenberg is not limited to currently streaming content to direct to the user. Rosenberg identifies "needed" recordings in advance, downloads and stores them for subsequent playback. Any recording that cannot be pulled off the broadcast stream can be requested and downloaded from

the server. The features of having a local recording library and an interactive server cannot be ignored. Second, Rosenberg's personalized audio system already frees the user from manually flipping through channels. The user simply selects a personalized audio channel and the consumer device selects recordings on the playlist from the library for playback. It is not proper to ignore critical elements of Rosenberg's system including the local storage library, the interactive server and the creation of personalized audio channels to construct an inferior system from which to find a motivation to make that inferior system better by combining it with the teachings of Stumphauzer. If presented with the teachings of Rosenberg, one skilled in the art would not remove most if not all of the critical features of the system in order to combine that skeleton as suggested.

These points are more clearly made by reviewing Rosenberg's most relevant embodiments.

As illustrated in Fig. 12 and recited starting at col. 15, line 32, the consumer device selects a recording from the library that matches the channel profile and plays it for the user. While playing, the device selects another recording that matches the profile to play when the first recording is finished and so forth. If the selected recording is not in the local library, the device transmits a request to the server to download the recording. If the recording is not downloaded in time, the device selects a different recording that matches the profile and is stored locally in the library. Together the local library and server provide the specific content that fits the user profile, thus the recordings available to the user are not limited to what is streaming at any particular time. One skilled in the art finds no teaching or motivation to modify the device to tune the receiver in accordance with the profile to select one of the currently streaming transmissions. Figures 13 and 14 outline very similar systems in which the want lists and play lists are available to the device.

As illustrated in Fig. 18 and recited starting at col. 22, line 66, the consumer device tunes the receiver to a particular channel and directs the streaming transmission to play the sound recording. The device identifies the sound recording, if it is a "wanted" recording the recording is stored in the library. In addition, the user can provide feedback on the sound recording, which may have the effect of altering one or more of the user profiles etc. There is no teaching to use the profile to tune the receiver to select the most desirable channel and direct that streaming transmission to the user. Furthermore, such a system would be redundant and thus not

motivated. If the user wants to listen to a certain type of music, he or she simply selects the personalized channel associated with that profile and can than access the local library that is built in-part by the streaming broadcast channels and the server directly.

As illustrated in Fig. 21 and recited starting at col. 25, line 28, the consumer device uses a program guide to tune the receiver to record "needed" recordings. The device does not playback the streaming transmissions. At any given time, the "needed" recording that is selected for storage in the library may or may not be in the same genre of music the user is current listening to. Furthermore, recordings that more closely match a profile may be streaming at the same time but they may already be stored in the library. If one were to cause the receiver to pick the most desired channel in accordance with the user ratings it may interfere with device's ability to populate the library.

Rosenberg posits a number of embodiments in which a local library of sound recordings is not maintained in the consumer device. Instead of using the user profile to tune the receiver to select the most desirable broadcast channel for real-time streaming playback Rosenberg pursues different system configurations that rely on personalized interaction with the server to maintain the essence of the personalized audio channels. This approach relies in large part on the server delivering specific sound recordings to individual consumer devices in groups of N recordings, as one off recordings or as a streaming personalized channel. In all cases, this approach represents a departure from a broadcast system of the type Applicant's system is built upon that broadcasts multiple unpersonalized channels to many users. These embodiments are not compatible with tuning the receiver to select particular broadcast channels.

As illustrated in Figure 26 and recited starting at col. 17, line 55 the consumer device selects a sound recording based on the selected channel and downloads it from the server. While the 1st song plays, the device downloads N more recordings from the server and stores them in "local cache". The cache is like a temporary library.

As illustrated in Figure 27 and recited starting at col. 18, line 45 the consumer device downloads the next recording from the server based on the selected audio channel while the current one is playing. Each sound recording is requested from the server, downloaded and then played when the current recording is finished.

As illustrated in Figure 28 and recited starting at col. 19, line 27 the consumer device transfers all control of the personalized audio channel to the server. The server uses the

profile(s) to construct a personalized audio channel that is transmitted to the consumer device and played. To change the channel the user must send a request to the server to select a different personalized audio channel.

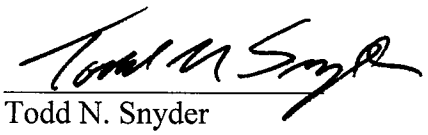
In summary, Applicant submits that the teachings of Rosenberg's and Stumphauzer's personalized audio systems are not properly combinable in the manner suggested by the Examiner. The two approaches are simply different. One cannot discard the key elements of Rosenberg to create a skeletal system and then proclaim it would be obvious to improve such a system. One of skill in the art would not be motivated to combine the teachings of Rosenberg and Stumphauzer as suggested. Rosenberg builds upon the base broadcast system by adding local storage for a recording library and an interactive server to provide sound recordings as needed. Rosenberg's system provides enhanced performance and flexibility at the cost of more resources, which is difficult to scale in systems that serve many users. Stumphauzer's system is confined to the existing unidirectional broadcast system. Applicant's system builds upon the existing unidirectional broadcast system by providing back channel capability to support real-time user feedback to rate the entertainment files. It is not obvious to deconstruct and than reconstruct Rosenberg's system to achieve that claimed by Applicant. Applicant respectfully requests that the rejection of the claims be withdrawn and a notice of allowance issued.

Conclusion

It is respectfully urged that the subject application is patentable over the cited references and is now in condition for allowance.

The Examiner is invited to call the undersigned at the below listed telephone number if, in the opinion of the Examiner, such a telephone conference would expedite or aid the prosecution and examination of this application.

Respectfully submitted,
ATTORNEY FOR APPLICANTS



Todd N. Snyder
Registration No. 41,320

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The DIRECTV Group, Inc.
CA / LA1 / A109
2230 E. Imperial Highway
El Segundo, CA 90245

Phone: (310) 964-0560